

#4

Attorney Docket No. DYNA-

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of John R. KANE *et al.*

Serial No.: 09/990,069

Examiner: No yet assigned.

Confirmation No.: 1481

Art Unit: ~~3762~~ 3739

Filed: November 21, 2001

For: **APPARATUS AND METHOD FOR MANIPULATING CORE BODY TEMPERATURE**

Commissioner for Patents  
Washington, D.C. 20231

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**POWER BY ASSIGNEE  
AND STATEMENT UNDER 37 C.F.R. §3.73(b)** TECHNOLOGY CENTER R3700

The Assignee of the entire right, title, and interest in the above-identified application hereby grants the registered practitioners of Cooley Godward LLP included in the Customer Number provided below power to act, prosecute, and transact all business in the U.S. Patent and Trademark Office in connection with this application, any applications claiming priority to this application, and any patents issuing therefrom.

The Assignee certifies that to the best of its knowledge and belief it is the owner of the entire right, title, and interest in and to the above-identified application as evidenced by:

[X] An Asset Sale Agreement document, a copy of which is enclosed herewith; and

[X] An assignment previously recorded in the U.S. Patent and Trademark Office at Reel 012319, Frame 0011.

Please direct all telephone calls and correspondence to:

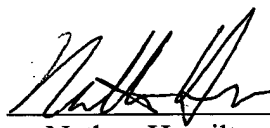
COOLEY GODWARD LLP

ATTN: Patent Group  
Five Palo Alto Square  
3000 El Camino Real  
Palo Alto, CA 94306-2155  
Tel: (650) 843-5000  
Fax: (650) 857-0663

CUSTOMER NUMBER: **23419**

The undersigned (whose title is supplied below) is empowered to sign this statement on behalf of the Assignee.

Date: 2-12-03

Signature: 

Name: Nathan Hamilton

Title: President

Company: DynaTherm Medical, Inc.

UNITED STATES  
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JANUARY 22, 2002

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SNELL & WILMER, LLP  
RANDEE S. SCHWARTZ, ESQ.  
ONE ARIZONA CENTER  
400 E. VAN BUREN STREET  
PHOENIX, ARIZONA 85004-2202



\*101902820A\*

UNITED STATES PATENT AND TRADEMARK OFFICE  
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

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THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 11/21/2001

REEL/FRAME: 012319/0073  
NUMBER OF PAGES: 4

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:  
KANE, JOHN R. ✓

DOC DATE: 10/29/2001 ✓

ASSIGNOR:  
SIMS, RYAN M. ✓

DOC DATE: 10/29/2001 ✓

ASSIGNEE:  
AQUARIUS MEDICAL CORPORATION ✓  
16099 N. 82ND STREET, SUITE B1  
SCOTTSDALE, ARIZONA 85260-1800

SERIAL NUMBER: 09990069 ✓  
PATENT NUMBER:

FILING DATE: 11/21/2001  
ISSUE DATE:

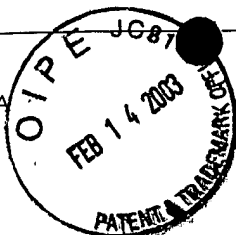
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ASSIGNMENT DIVISION  
OFFICE OF PUBLIC RECORDS

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11-29-2001

U.S. Department of Commerce  
Patent and Trademark Office  
PATENT



101902820

RECORDATION COVER SHEET  
PATENTS ONLY

U.S. PTO  
09/990069  
11/21/01

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies)

Submission Type

- ☒ New
- ☐ Resubmission (Non-Recordation)  
Document ID#
- ☐ Correction of PTO Error  
Reel #  Frame #
- ☐ Corrective Document  
Reel #  Frame #

Conveyance Type

- ☒ Assignment ☐ Security Agreement
- ☐ License ☐ Change of Name
- ☐ Merger ☐ Other

U.S. Government  
(For Use ONLY by U.S. Government Agencies)

- ☐ Departmental File ☐ Secret File

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Conveying Party(ies)

☐ Mark if additional names of conveying parties attached

Name (line 1) John R. Kane

Execution Date  
Month Day Year  
10/29/2001

Name (line 2)

Second Party

Name (line 1) Ryan M. Sims

Execution Date  
Month Day Year  
10/29/2001

Name (line 2)

Receiving Party

☐ Mark if additional names of receiving parties attached

Name (line 1) Aquarius Medical Corporation

Name (line 2)

Address (line 1) 16099 N. 82nd Street

Address (line 2) Suite B1

Address (line 3) Scottsdale

Arizona/U.S.A.

85260-1800

City

State/Country

Zip Code

☐ If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative is attached. (Designation must be a separate document from Assignment.)

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

11/28/2001 TBIAZ1 00000081 09990069

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11/26/2001 EFLORES 00000010 09990069

04 FC:581

40.00 OP

Void date: 11/26/2001 EFLORES

11/26/2001 EFLORES 00000010 09990069

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Mail documents to be recorded with required cover sheet(s) information to:

Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

## Correspondent Name and Address

Area Code and Telephone Number (602) 382-6332

Name Randee S. Schwartz, Esq.

Address (line 1) Snell &amp; Wilmer, LLP

Address (line 2) One Arizona Center

Address (line 3) 400 E. Van Buren Street

Address (line 4) Phoenix, AZ 85004-2202

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## Pages

Enter the total number of pages of the attached conveyance document  
including any attachments.

# 2

## Application Number(s) or Patent Number(s)

☐ Mark if additional numbers attached

Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property).

## Patent Application Number(s)

## Patent Number(s)


If this document is being filed together with a new Patent Application, enter the date the patent application was  
signed by the first named executing inventor.Month Day Year  
11/21/2001

## Patent Cooperation Treaty (PCT)

Enter PCT application number  
only if a U.S. Application Number  
has not been assigned.PCT PCT PCT  
PCT PCT PCT

## Number of Properties

Enter the total number of properties involved.

# 1

## Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41): \$ 40.00

Method of Payment:

Enclosed ☒ Deposit Account ☐

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

# 19-2814

Authorization to charge additional fees:

Yes ☒ No ☐

## Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any  
attached copy is a true copy of the original document. Charges to deposit account are authorized, as  
indicated herein.

Randee S. Schwartz, Reg. No. 45,085

11/21/2001

Name of Person Signing

Signature

Date

## ASSIGNMENT

## UTILITY PATENT

**WHEREAS**, the undersigned inventor(s) (hereinafter singly and collectively, "ASSIGNOR") of the addresses indicated below, have invented subject matter disclosed in the patent application entitled APPARATUS AND METHOD FOR MANIPULATING CORE BODY TEMPERATURE filed herewith;

**AND WHEREAS**, AQUARIUS MEDICAL CORPORATION (hereinafter "ASSIGNEE"), a corporation organized and existing under and by virtue of the laws of the State of Delaware having its principal place of business and mailing address at 16099 N. 82nd Street, Suite B1, Scottsdale, AZ 85260-1800, is desirous of memorializing its interest therein;

**NOW, THEREFORE**, the undersigned ASSIGNOR hereby confirms that ASSIGNOR is a full time salaried employee of ASSIGNEE and that ASSIGNOR developed the subject matter of the invention on ASSIGNEE's time and at the expense of ASSIGNEE and within the scope of ASSIGNOR's duties as an employee of ASSIGNEE and thereby ASSIGNOR recognizes that the ASSIGNEE owns the invention as described in the aforesaid application. Nonetheless to comport with Patent Office procedures, ASSIGNOR memorializes that relationship in the form of this assignment and;

**THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ASSIGNOR by these presents does sell, assign and transfer unto ASSIGNEE, its successors, assigns and legal representatives, the full and exclusive right to the invention, as described in the aforesaid application, including patent, copyright and any other intellectual property rights, any provisional, non-provisional, continuation, continuation in part, divisional, reissue, reexamination, foreign, PCT or other patent application or like document, or any other application which claims priority to said application, in the United States and all foreign countries, together with the right of priority under the International Convention for the Protection of Industrial Property, Inter-American Convention Relating to Patents, Designs and Industrial Models, and any other international agreements to which the United States adheres, and hereby authorizes and requests the Commissioner of Patents to issue said Letters Patent to ASSIGNEE, for the sole use and benefit of ASSIGNEE, its successors, assigns and legal representatives,

**AND HEREBY AGREES** to transfer to ASSIGNEE, its successors, assigns and legal representatives, without further remuneration, a like interest in and to any improvements, derivative works, and applications based thereon, growing out of or relating to the invention; and to provide all reasonable assistance and execute any papers, if accurate, desired by ASSIGNEE, its successors, assigns and legal representatives, to preserve, acquire and/or perfect ASSIGNEE's full protection and title in and to the invention and any improvements and to file any of the aforementioned applications.

In the event that the Application Number and/or filing date is not available when this Assignment is executed, I hereby authorize and request any attorney associated with Snell & Wilmer L.L.P., Customer No. 20322, to insert above the filing date and/or the application number of said application when known.

**EXECUTED** as of the date(s) written below by ASSIGNOR:

INVENTOR'S NAME

ADDRESS

SIGNATURE

DATE

John R. Kane

9292 E. Cortez  
Scottsdale, AZ  
85260

John R. Kane

10/29/01

Ryan M. Sims

1029 W. Manhatton  
Tempe, AZ  
85282

Ryan M. Sims

10.29.01

**SNELL & WILMER L.L.P.**

One Arizona Center  
400 East Van Buren  
Phoenix, Arizona 85004-2202  
(602) 382-6332  
Fax (602) 382-6070

To the honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

AQUARIUS MEDICAL CORPORATION  
7555 E. Camelback Road, Suite 210  
Scottsdale, AZ 85251Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of Conveyance:

- ☐ Assignment ☐ Merger
- ☐ Security Agreement ☐ Change of Name
- ☒ Other: **Asset Sale Agreement**

Execution Date: **August 26, 2002.**

2. Name and address of receiving party(ies):

DYNATHERM MEDICAL, INC.  
1245 Lincoln Avenue  
Palo Alto, CA 94301

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Additional name(s) attached? ☐ Yes ☒ No

4. Application number(s) or patent number(s)

If this document is being filed together with a new application, the execution date of the application is :

A. Patent Application No.(s):

U.S. Serial No. 09/990,069

B. Patent No.(s)

US Patent No. 5,800,383

US Patent No. 5,830,180

US Patent No. 6,024,720

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Patent Group  
Cooley Godward LLP  
Five Palo Alto Square  
3000 El Camino Real  
Palo Alto, CA 94306-2155

6. Total number of application and patents involved: 4

7. Total Fee (37 CFR 3.41).....\$40.00

☒ Enclosed: Total Fee for four **\$160.00**☐ Authorized to be charged to deposit account

8. Deposit account number: 03-3117

(Attach duplicate copy of this page if paying by deposit account)

## DO NOT USE THIS SPACE

9. Statement and signature.

*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*

Reg. No.: 45,298

Name of Person Signing:

Sunil K. Singh, Ph.D.

Signature: Sunil K. SinghDate February 14, 2003Total number of pages including cover sheet, attachments, and document: 19Express Mail Label No. EV 151700720 USDate of Deposit: February 14, 2003



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## ASSET SALE AGREEMENT

This Asset Sale Agreement ("Agreement") is made as of August 26, 2002, at Palo Alto, California, by and between DYNATHERM MEDICAL, INC, a Delaware Corporation ("Buyer"), and AQUARIUS MEDICAL CORPORATION, a Delaware corporation qualified to do business in Arizona ("Seller") (collectively the "Parties").

### RECITALS

WHEREAS, Buyer desires to purchase from Seller and Seller desires to sell to Buyer substantially all of the assets of Seller (the "Assets") pursuant to the terms and conditions set forth in this Agreement and the accompanying Promissory Note ("Promissory Note" or "Note") entered into by and between Buyer and Kobayshi Pharmaceutical Co., Ltd., a Japanese corporation ("Kobayashi") attached hereto.

WHEREAS, Buyer and Seller desire that this transaction be consummated according to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the promises and conditions stated herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

### AGREEMENT

1. **Sale of Assets.** On the closing date of this transaction, Seller shall sell to Buyer and Buyer shall purchase from Seller, on the terms and conditions specified in this Agreement and the accompanying Promissory Note all of the assets of Seller ("Assets") as set forth in Exhibit A, attached hereto. Notwithstanding the above, Buyer and Seller acknowledge that certain intellectual property of Seller has been licensed to Seller by the Board of Trustees of the Leland Stanford Junior University ("Stanford University") entitled "Apparatus and Method for Core Body Warming of Mammals Experiencing Hypothermia" pursuant to that certain Agreement between Stanford University and Seller dated February 7, 1997 (the "Patent License"), and the Buyer and Seller agree that Stanford's consent to the assignment of the Patent License to Buyer and the novation of the Patent License to release Seller is a condition precedent to this Agreement.
2. **Buyer's Purchase Price.** Buyer's purchase price for the Assets sold shall be as follows:
  - A. **Note at Closing.** In exchange and consideration for possession and title to the Assets, Buyer shall deliver to Seller and to Kobayashi at Closing, the above-mentioned Promissory Note payable to Kobayashi on or before December 31, 2002 in the amount of Seven Hundred Thousand Dollars (\$700,000.00). The Note shall be secured solely and only by the Patent License; there shall exist no

ASSET SALE AGREEMENT

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other security on the Note. In addition, Buyer's obligation to pay the Note shall be expressly contingent upon the satisfaction by Kobayashi and Aquarius Medical of certain enumerated conditions precedent, which are set forth in detail in the accompanying Note and the Asset Sale Indemnification Agreement ("Indemnification Agreement") entered into by and between Kobayashi and Buyer. Per the terms of the Indemnification and Agreement and Note, in the event that the enumerated conditions precedent are not met, Buyer shall have the discretion and right to void the Note and this Agreement.

B. **No Assumption of Liabilities.** It is expressly understood by the Parties that by way of this Agreement Buyer has not assumed and shall not assume any of the liabilities of Seller whatsoever (including, but not limited to debts, claims and/or any third party liabilities and/or those liabilities and obligations of Seller which arose in connection with the Seller's operation of its business and which are due after the Closing Date) ("Liability" or "Liabilities") upon Closing until: (1) the conditions precedent set forth in the Note and the accompanying Asset Sale Indemnification Agreement have been met to the satisfaction of Buyer in Buyer's sole discretion; and (2) Buyer has made payment on the Note in the agreed upon \$700,000 sum. Until each of these two aforementioned conditions are met, it is expressly agreed by the Parties that Buyer shall incur no Liability of any kind or nature associated with the Aquarius Assets. The Liabilities and obligations of Seller are more specifically set forth in Exhibit B, attached hereto and incorporated herein by reference.

C. **Bonus.** Buyer agrees to pay a cash bonus (the "Bonus") to Seller of Four Hundred Thousand Dollars (\$400,000.00), by a bank cashier's check or by wire transfer, within five (5) days after Buyer achieves cumulative sales of Five Million Dollars (\$5,000,000.00) of products resulting from the intellectual property that is subject to this transaction (whether such intellectual property was owned by or licensed to Seller).

D. **Excise and Property Taxes.** Buyer shall pay all sales and use taxes arising out of the transfer of the Assets.

3. **Representations and Warranties of Selling Parties.** Seller represents and warrants that:

A. **Organization, Standing, and Qualification of Seller.** Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware and is duly qualified and in good standing in the State of Arizona. The execution and delivery of this Agreement and the consummation by Seller of the transaction contemplated hereby have been duly authorized by the board of directors and the shareholders of Seller, and no further corporate authorization is

necessary on the part of Seller. Notwithstanding the foregoing, the Parties understand that Seller shall be dissolving subsequent to the Closing.

- B. **No Consents.** No consent, approval, or authorization of, or declaration, filing, or registration with, any United States federal or state governmental or regulatory authority is required to be made or obtained by Seller in connection with the execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated by this Agreement, other than the consent of Stanford University to the assignment of the Patent License as set forth in Paragraph 6.B.
  - C. **Title to Assets.** Seller has good and marketable title to all of the Assets and all these Assets are free and clear of restrictions on or conditions to transfer or assignment, and free and clear of mortgages, liens, pledges, charges, encumbrances, equities, claims, easements, rights of way, covenants, conditions, or restrictions, except as disclosed on Exhibit A. Buyer acknowledges that Stanford's consent to the assignment of the Patent License and novation to release Seller is a condition precedent to this Agreement. Buyer acknowledges the current status of various Intellectual Property matters as disclosed on Exhibit A.
  - D. **No Default.** Seller is not in default or material breach of any contracts, agreements, leases, or other instruments or obligations to be sold and transferred to Buyer pursuant to this Agreement.
  - E. **No Violation.** Consummation of the sale of the Assets by Seller will not violate any contract or agreement to which Seller is a party, provided that the consent of Stanford University and novation to release Seller is obtained for the assignment of the Patent License.
  - F. **Litigation.** There is no litigation pending against Seller of which Seller or its officers are aware that will, or which reasonably would be expected to, affect consummation of the sale described in this Agreement or the transfer of title of any of the Assets in good and marketable condition to Buyer.
4. **Buyer's Representations and Warranties.** Buyer represents and warrants that:
- A. **Duly Authorized.** Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware. The execution and delivery of this Agreement and the consummation by Buyer of the transaction contemplated hereby have been duly authorized by the members and managers of Buyer, and no further corporate authorization is necessary on the part of Buyer.
  - B. **No Consents.** No consent, approval, or authorization of, or declaration, filing, or registration with, any United States federal or state governmental or regulatory

authority is required to be made or obtained by Buyer in connection with the execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated by this Agreement, other than the consent of Stanford University to the assignment of the Patent License and novation to release Seller as set forth in Paragraph 6.B.

- C. **Litigation.** There is no litigation pending against Buyer of which Buyer or its managers and members are aware that will, or which reasonably would be expected to, affect consummation of the sale described in this Agreement.
- D. **No Violation.** Consummation of the sale of the assets by Buyer will not violate any contract or Agreement to which Buyer is a party.

5. **Seller's Obligations Before Closing.** Seller covenants that from the date of this Agreement through Closing:

- A. **Buyer's Access to Premises and Information.** Buyer and its counsel, accountants, and other representatives shall have reasonable access during normal business hours, upon reasonable notice in writing to Seller, to all properties, books, accounts, records, contracts, and documents of or relating to Seller. Seller shall furnish or cause to be furnished to Buyer and its representatives all data and information concerning the Assets that may reasonably be requested by Buyer. These aforementioned rights of Buyer shall be exercisable through December 31, 2002 or until Buyer makes payment to Kobayshi under the Promissory Note, whichever is sooner. Nothing in this Agreement shall obligate Seller to disclose any classified or confidential information or provide any access to representatives of Buyer prohibited or unauthorized by applicable governmental authority.
- B. **Conduct of Business in Normal Course.** Seller will carry on its businesses and activities in substantially the same manner as previously carried out prior to the date of this Agreement through the date of Closing.
- C. **Existing Agreements.** Seller will not modify, amend, cancel, or terminate any of its existing contracts or agreements, or agree to do any of those acts, without the consent of Buyer.
- D. **Consents of Others.** As soon as reasonably practical after the execution and delivery of this Agreement, and in any event on or before the Closing Date, Seller will use its commercially reasonable efforts to obtain the written consent of Stanford University and the persons described in Exhibit C to this Agreement, and will furnish to Buyer executed copies of those consents.
- E. **Representations and Warranties True at Closing.** All representations and warranties of Seller set forth in this Agreement will also be true and correct, in all

material respects, as of the Closing Date as if made on that date, except to the extent that any of them may become untrue because of events beyond the control of Seller, who is unable to make them true as of the Closing Date despite its best efforts to do so.

- F. **Corporate and Shareholder Approvals.** Seller will deliver to Buyer, on or before the Closing Date, the written consent of its shareholder(s) authorizing and approving the sale of the Assets to Buyer on the terms and conditions provided in this Agreement.

6. **Buyer's Obligations Before Closing.**

- A. **Information To Be Held in Confidence.** Buyer agrees that, unless and until the Closing has been consummated, Buyer and its managers, members, employees, agents, officers, directors, and other representatives will hold in strict confidence, and will not use to the detriment of Seller, all data and information included in the Assets and/or the liabilities assumed hereunder, except insofar as that data and information may be required by law to be included in any document that Buyer is required to file with any federal, state or local government agency. If the transactions contemplated by this Agreement are not consummated, Buyer will return to Seller all that data and information that Seller may reasonably request, including, but not limited to, worksheets, test reports, manuals, lists, memoranda, and other documents prepared by or made available to Buyer in connection with this transaction. Buyer shall not disclose to any third party any data and information that is not included in the Assets and/or liabilities assumed hereunder and shall not use such data and information for any purpose other than performing this Agreement.
- B. **Buyer's Assumption of Patent License and Seller's Release.** Buyer shall agree to assume all of Seller's duties, liabilities and obligation under the Patent License. Notwithstanding, the foregoing, it is understood and agreed by the Parties that Buyer shall not assume any of the aforementioned duties, liabilities and/or obligations of any kind associated in any way with the aforestated Patent License (including, but not limited to all royalty payments, ongoing development obligations and costs, penalties, etc.) until and unless all such duties, liabilities and obligations are disclosed in writing and in full detail to Buyer on or before the Closing Date.
- C. **Cooperation in Securing Consents of Third Parties.** Buyer will use its best efforts to assist Seller in obtaining the consent of all necessary persons and agencies to the assignment and transfer to Buyer of any and all Assets, including agreements with Leland Stanford Junior University and the United States government or any of its agencies. As soon as reasonably practicable after the execution and delivery of this Agreement, and in any event on or before the

Closing Date, Buyer will obtain the consents of all necessary persons to Buyer's performance of this Agreement and to Buyer's assumption of any obligations under it.

- D. **Bulk Sales Law.** Buyer waives compliance with the provisions of the California Commercial Code relating to bulk transfers in connection with the sale of the Assets. Nothing in this paragraph shall estop or prevent either Buyer or Seller from asserting as a bar or defense to any action or proceeding brought under that law that it does not apply to the sale contemplated under this Agreement.

7. **Conditions Precedent to Buyer's Performance.** The obligations of Buyer to make payment on the Note and assume certain liabilities associated with the Assets (which shall be negotiated in good faith and agreed upon subsequent to Closing and on or before December 31, 2002) is subject to the satisfaction of: (1) all of the conditions set out below in this Paragraph 7 at or before the Closing; (2) all of the conditions precedent set forth in section 3 of the accompanying Promissory Note on or before December 31, 2002; and (3) all of the conditions precedent set forth in section 3 of the accompanying Asset Sale Indemnification Agreement. Buyer may waive any or all of these conditions in whole or in part without prior notice; provided, however, that no such waiver of a condition shall constitute a waiver by Buyer of any of its other rights or remedies, at law or in equity, if Seller should be in default of any of its representations, warranties, or covenants under this Agreement.

- A. **Accuracy of Seller' Representations and Warranties.** Except as otherwise permitted by this Agreement, all representations and warranties by Seller in this Agreement shall be true in all material respects on and as of the Closing Date as though made at that time.
- B. **Performance by Seller.** Seller shall have performed, satisfied, and complied in all material respects with all covenants, agreements, and conditions required by this Agreement to be performed, satisfied or complied with by Seller on or before the Closing Date.
- C. **No Material Adverse Change.** During the period from the date of this Agreement to the Closing Date, there shall not have been any material adverse change in the financial condition or the results of operations of Seller, and Seller shall not have sustained any material loss or damage to the Assets, whether or not insured, that materially affects its ability to conduct a material part of its business.
- D. **Corporate Approval.** The execution and delivery of this Agreement by Seller, and the performance of Seller's covenants and obligations under it, shall have been duly authorized by all necessary corporate action, and Buyer shall have received copies of all resolutions pertaining to that authorization, certified respectively by the secretary of Seller.

## **AMENDMENT TO ASSET SALE AGREEMENT**

This Amendment to the Asset Sale Agreement dated August 26, 2002 (the "Asset Sale Agreement") is dated as of December 26, 2002 (the "Amendment"), by and between DynaTherm Medical, Inc., a Delaware corporation ("DynaTherm") and Aquarius Medical Corporation, a Delaware corporation qualified to do business in Arizona ("Aquarius", and together with DynaTherm, the "Parties"). Except as set forth herein, all terms and conditions contained in the Asset Sale Agreement shall remain in full force and effect. Unless specifically designated otherwise, capitalized terms used in this Amendment shall have the meanings given them in the Asset Sale Agreement.

### **RECITALS**

WHEREAS, the Company and Purchasers previously entered into the Asset Sale Agreement;

WHEREAS, the Asset Sale Agreement may be amended by written consent of the Parties;

WHEREAS, Exhibit A of the Asset Sale Agreement provides that the Assets listed therein shall be mutually agreed upon by the Parties at a later date as a condition precedent for payment of the Promissory Note;

WHEREAS, Exhibit B of the Asset Sale Agreement provides that the Obligations and Liabilities listed therein shall be mutually agreed upon by the Parties at a later date as a condition precedent for payment of the Promissory Note;

WHEREAS, Exhibit C of the Asset Sale Agreement provides that the written consent of the assignment by Stanford University and other consents shall be provided;

NOW, THEREFORE, in consideration of the mutual promises contained in the Asset Sale Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Company and the Purchasers hereby agree as follows:

### **AGREEMENT**

#### **1. Amendments to Exhibits to Asset Sale Agreement.**

1.1 Exhibit A of the Asset Sale Agreement is hereby amended and restated to read in its entirety as set forth in Exhibit A-1 to the Amendment.

1.2 Exhibit B of the Asset Sale Agreement is hereby amended and restated to read in its entirety as set forth in Exhibit B-1 to the Amendment.

1.3 Exhibit C of the Asset Sale Agreement is hereby amended and restated to read in its entirety as set forth in Exhibit C-1 to the Amendment.

2. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. This Amendment and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law. Terms not otherwise defined in this Amendment shall have the meaning set forth in the Purchase Agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Amendment, effective as of the date first written above.

Aquarius Medical Corporation, a Delaware Corporation

By: Tsukasa Sasaki  
Tsukasa Sasaki  
Vice President (and authorized signatory on behalf of Seller)

DynaTherm Medical, Inc., a Delaware corporation

By: \_\_\_\_\_  
Nathan Hamilton  
President (and authorized signatory on behalf of Buyer)



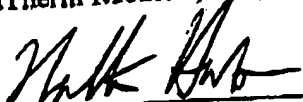
2. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. This Amendment and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law. Terms not otherwise defined in this Amendment shall have the meaning set forth in the Purchase Agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Amendment, effective as of the date first written above.

Aquarius Medical Corporation, a Delaware Corporation

By: \_\_\_\_\_  
Tsukasa Sasaki  
Vice President (and authorized signatory on behalf of Seller)

DynaTherm Medical, Inc., a Delaware corporation

By:  \_\_\_\_\_  
Nathan Hamilton  
President (and authorized signatory on behalf of Buyer)

# EXHIBIT A-1

## ASSETS

In addition to the Patents, Patent Applications and Trademarks listed herein, the Assets include all intellectual property developed by employees or staff of Aquarius and not listed below.

AQUARIUS MEDICAL CORPORATION INTELLECTUAL PROPERTY AS OF JUNE 1, 2001				
PATENTS				
PATENT/ APPLICATION NO.	TITLE	ASSIGNEE	ISSUE DATE	COMMENTS
U.S. Patent No. 5,684,438	Apparatus and Method For Core Body Warming of Mammals Experiencing Hypothermia	Stanford University*	November 4, 1997	*Aquarius is exclusive licensee with right to maintain patent. Aquarius paid 3.5 year maintenance fee.
Australian Patent No. 724668	Improved Apparatus and Method For The Core Body Warming of Mammals Experiencing Hypothermia	Aquarius Medical Corporation*	January 25, 2001	*Dennis Grahn is named inventor
Canadian Application No. 2284519	Improved Apparatus and Method For The Core Body Warming of Mammals Experiencing Hypothermia	Aquarius Medical Corporation and the Board of Trustees of the Leland Stanford Junior University	Pending	
European Application No. 96 907 933.4	Apparatus and Method For The Core Body Warming of Mammals Experiencing Hypothermia	Board of Trustees of the Leland Stanford Junior University	Pending	*Aquarius is exclusive licensee with right to prosecute patent
Japanese Application No. Heisei 10 (1998)- 539705	Improved Apparatus and Method For The Core Body Warming of Mammals Experiencing	Aquarius Medical Corporation*	Pending	*Dennis Grahn is named inventor

	Hypothermia			
European Application No. 98 911 542.3	Improved Apparatus and Method For The Core Body Warming of Mammals Experiencing Hypothermia	Aquarius Medical Corporation*	Pending	*Dennis Grahn is named inventor
U.S. Patent No. 5,800,383	Fluid Management System for Arthroscopic Surgery	Aquarius Medical Corporation	September 1, 1998	
U.S. Patent No. 5,830,180	Fluid Management System for Arthroscopic Surgery	Aquarius Medical Corporation	November 3, 1998	
U.S. Patent No. 6,024,720	Fluid Management System for Arthroscopic Surgery	Aquarius Medical Corporation	February 15, 2000	
U.S. Serial No. 09/990,069	Apparatus and Method for Manipulating Core Body Temperature	Aquarius Medical Corporation	Pending	

TRADEMARKS				
Trademark	United States Reg. No.	Reg. Date	Serial No.	Filing Date
Aquarius & Design	2,258,517	July 6, 1999	75,304,425	June 6, 1997
Thermal Rescue	2,397,807	October 24, 2000	75,840,917	November 4, 1999

**EXHIBIT B-1**

**OBLIGATIONS AND LIABILITIES**

**None.**

## **EXHIBIT C-1**

### **CONSENTS**

**Other than the acknowledgement and consent of Stanford University (attached hereto) of the assignment of the License Agreement between Stanford and Aquarius with an effective date of 2/7/97; S94-154, "Apparatus and Method for Core Body Warming of Mammals Experiencing Hypothermia", no other consents or acknowledgements are necessary under the Asset Sale Agreement.**

2002-9-2 0:57

2002/09/02 00:57



## KOBAYASHI PHARMACEUTICAL Co., Ltd.

September 2, 2002

Ms. Mary K. Watanabe  
Senior Associate  
Office of Technology Licensing  
Stanford University  
800 Welch Road, Suite 850  
Palo Alto, CA 94304-1850 USA

RE: License Agreement between Stanford and Aquarius, Effective Date 2/7/87;  
894-184, "Apparatus and Method for Core Body Warming of Mammals Experiencing  
Hypothermia" invented by Dennis Grahn

Dear Mr. Watanabe:

We would like to give you a notice of completion in assigning the above referenced license from  
Aquarius Medical Corporation to Dynatherm Medical, Inc., wholly owned subsidiary of  
Archangel Bioventures, LLC. The Asset Sale Agreement is made as of August 26, 2002, at Palo  
Alto, California by and between Dynatherm Medical, Inc. and Aquarius Medical Corporation.

We would also like to inform you of the contact information of Dynatherm Medical, Inc. on the  
attached form.

We appreciate your cooperation in this matter.

Respectfully yours,

Tsukasa Sasaki  
Director & Controller  
Global Strategic Finance Department  
Strategic Corporate Division  
Kobayashi Pharmaceutical Co., Ltd.  
tsasaki@kobayashi.co.jp  
Phone: +81-6-6222-0089  
Fax: +81-6-6222-0114

## Attachment:

Co: Nathan Hamilton, Archangel Bioventures, LLC  
Akira Horiguchi, Kobayashi Pharmaceutical Co., Ltd.  
Masaki Tanaka, Kobayashi Pharmaceutical Co., Ltd.  
Masahiro Hirooka, Kobayashi Pharmaceutical Co., Ltd.

3-6-4-chome, Doshomachi, Chuo-ku, Osaka, Japan  
Tel: International 81-6-6222-0088 Fax: International 81-6-6222-9854

2002-9-2 0:58

コトヤシヤ KK ホンポ 7727

NO.789

P.2



# KOBAYASHI PHARMACEUTICAL Co., Ltd.

All general notices to LICENSEE should be sent to:

Nathan Hamilton  
President  
Dynacorp Medical Inc.  
1245 Lincoln Avenue  
Palo Alto, CA 94301  
Nhamilton@archangelventure.com  
Phone: 415-987-8888  
Fax: 650-826-0178

All financial invoices to LICENSEE (i.e., accounting contact) should be e-mailed to:

Nathan Hamilton  
Nhamilton@archangelventure.com

All progress report invoices to LICENSEE (i.e., technical contact) should be e-mailed to:

Nathan Hamilton  
Nhamilton@archangelventure.com

3-64-chome, Doshomachi, Chuoh-ku, Osaka, Japan  
Tel: International 81-6-6222-0088 Fax: International 81-6-6222-9854

Aquarius Medical Corporation  
Status of Fees for Intellectual Property  
As of June 1, 2002

"Fluid Management System for Arthroscopic Surgery" a.k.a. "Aqua Center"

US Patent # 5,800,383	Maintenance Fee	Paid 3/02
US Patent # 5,830,180	Maintenance Fee	Paid 3/02
US Patent # 6,024,720	Maintenance Fee	Due 8/15/03

"Apparatus and Method for Core Body Warming of Mammals Experiencing Hypothermia" "Stanford"

US Patent # 5,683,438	Maintenance Fee	Paid 2/01
EU App # 96 907 933.4	Annuity Fee	Paid 2/02

"Improved Apparatus and Method for Core Body Warming of Mammals Experiencing Hypothermia" "AMC"

AU Patent # 724668	None due at this time	
CA App # 2284519	Maintenance & Exam Fee	Paid 3/02
EU App # 98 911 542.3	Annuity Fee	Paid 2/02
JA App # 10(1998)-539705	None due at this time	

"Apparatus and Method for Manipulating Core Body Temperature"

US App # 09/990,069	Application Fee	Paid 11/01
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Domain Names:

Aquariusmedical.com	Registered with Network Solutions	Expires 10/16/02
Acrotherm.com	Registered with Network Solutions	Expires 08/18/03
All domain names are transferable		

Trademarks:

Aquarius & Design	Serial #75/304,425	Due 2005
Thermal Rescue	Serial #75/840,917	Due 2006
Acrotherm	Serial #78/002,859	Statement of use not filed





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900 WELCH ROAD • SUITE 350 • PALO ALTO, CA 94304-1850  
(650) 723-0651 • FAX (650) 725-7295

VIA First Class Mail

August 20, 2002

Tsukasa Sasaki  
Kobayashi Pharmaceutical Co., Ltd.  
4-3-6 Doshomachi  
Chuo-ku  
Osaka Japan  
011-81-6-6222-0114

RE: License Agreement between Stanford and Aquarius, Effective Date 2/7/97;  
S94-154, "Apparatus and Method for Core Body Warming of Mammals Experiencing  
Hypothermia" invented by Dennis Grahn

Dear Mr. Sasaki:

As of this time, the above referenced license between Stanford and Aquarius, which was later assigned to Kobayashi, remains in effect and in good standing. We understand Kobayashi is in the process of negotiating with ArchAngel BioVentures, LLC, to assign this license to a new company to be formed by ArchAngel. We acknowledge that this is within their rights under the license. We expect this new company to diligently develop the technology per the requirements of the license.

We would like to be notified in writing of the assignment and would greatly appreciate receiving the contact information for the new company requested on the accompanying form. Please let me know if you have any further questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Mary K. Watanabe".

Mary K. Watanabe  
Senior Licensing Associate  
Stanford University Office of Technology Licensing  
mary.watanabe@stanford.edu  
Phone: (650) 725-9411  
Fax: (650) 725-7295



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(650) 723-0651 • FAX (650) 725-7295

All general notices to LICENSEE should be sent to:

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All financial invoices to LICENSEE (i.e., accounting contact) should be e-mailed to:

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All progress report invoices to LICENSEE (i.e., technical contact) should be e-mailed to:

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